

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, DC 20554

In the Matter of )

Communications Assistance for )  
 Law Enforcement Act )

CC Docket No. 97-213

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.  
 REGARDING THE CALEA COMPLIANCE DATE**

AirTouch Communications, Inc. ("AirTouch")<sup>1</sup> submits these comments in response to the Commission's *Public Notice* requesting comments on how, assuming an extension of the assistance capability requirements in the Communications Assistance for Law Enforcement Act ("CALEA") is justified, an extension of the CALEA deadline "can most quickly and efficiently" be undertaken.<sup>2</sup> As AirTouch demonstrates below, there is no doubt that an extension is warranted for *all* telecommunications carriers subject to CALEA. Consequently, the most efficient way to handle this matter is for the Commission to enter *expeditiously* a blanket extension applicable to all carriers subject to CALEA. Such an approach will alleviate the need for carriers to petition the Commission individually for needed extensions and relieve

<sup>1</sup> AirTouch has ownership interests in numerous broadband and narrowband commercial mobile radio service ("CMRS") providers in the United States and 11 other countries. On May 5, 1998, AirTouch, jointly filed with Motorola, Inc. a petition for extension of the CALEA assistance capability requirements. Therein, AirTouch and Motorola demonstrate that delays in finalizing capacity and capability standards make it impossible for AirTouch to deploy CALEA-compliant technology in time to meet the October 25, 1998 deadline. AirTouch requests an extension with respect to equipment it uses that is manufactured by Lucent, Ericsson, Nortel, and Motorola. That petition is incorporated by reference herein. Further, AirTouch's paging affiliate, AirTouch Paging, Inc., filed its own extension petition on May 4, 1998.

<sup>2</sup> See *Public Notice*, "Communications Assistance for Law Enforcement Act, CC Docket No. 97-213," DA 98-762 (April 20, 1998).

the Commission of the burden of responding to this flood of petitions. In sum, a blanket extension will minimize the burden on carriers, equipment manufacturers, and Commission staff that would otherwise result from requiring carriers to prepare and file individual (and largely redundant) extension petitions.

# **I. AN EXTENSION OF THE CALEA ASSISTANCE CAPABILITY COMPLIANCE DATE IS WARRANTED FOR ALL TELECOMMUNICATIONS CARRIERS**

The Communications Act authorizes the Commission to extend CALEA's assistance capability deadline of October 25, 1998 "if [it] determines that compliance . . . is not reasonably achievable through application of technology available within the compliance deadline."<sup>3</sup> Compliance with the current implementation deadline is not reasonably achievable for any carrier, although the reasons for this differ depending on the type of carrier.

## **A. Cellular, Broadband PCS, and Local Exchange Carriers.**

Industry standards implementing CALEA's assistance capability requirements were published in December 1997.<sup>4</sup> As the Federal Bureau of Investigation and the Department of Justice (jointly "FBI") have recognized, the scope of these standards are limited to "telecommunications carriers providing wireline, cellular, and [broadband] personal communications services."<sup>5</sup> As the Commission is well aware, this standard has been challenged as being both over-inclusive and under-inclusive. These challenges undermine the stability of the standard and effectively preclude equipment manufacturers from developing CALEA-compliant technology.

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<sup>3</sup> 47 U.S.C. § 1006(c)(2).

<sup>4</sup> See Telecommunications Industry Association and Electronic Industries Association, *Lawfully Authorized Electronic Surveillance*, Interim/Trial-Use Standard, J-STD-025 (December 1997).

<sup>5</sup> FBI Joint Petition for Expedited Rulemaking, CC Docket No. 97-213, at 4 ¶ 3 (March 27, 1998).

Equipment vendors cannot be expected to continue their efforts and expend resources developing software and hardware based upon standards and criteria that are still subject to change. Indeed, vendors have advised the Commission that they will be unable to provide CALEA-compliant equipment by the current deadline.<sup>6</sup> For this reason, all parties agree that an extension of the CALEA deadline is imperative.

In fact, even the law enforcement agencies do not appear to contest the need for carriers *covered by the industry standard* to obtain an extension. Two months ago the Attorney General advised Congress that manufacturers will require at least 18 months after the Commission order resolving the pending deficiency petitions to build the equipment necessary to comply with the order.<sup>7</sup> More recently, as part of an *ex parte* presentation, the FBI advised the Commission that “the [CALEA] compliance date *should be extended* for a period of 18 months after [its] Order is issued in this proceeding.”<sup>8</sup>

Although AirTouch, and other carriers and equipment vendors agree with the FBI that an extension is needed, AirTouch and others *disagree* that 18 months is a reasonable extension period. First, if the Commission modifies or adds to the industry standard, time is needed so industry can

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<sup>6</sup> See TIA Comments (Dec. 12, 1997); AT&T Wireless/Ericsson/Lucent Joint Petition for Extension (March 30, 1998); AirTouch/Motorola Joint Petition for Extension and Attached Correspondence from Nortel (May 5, 1998).

<sup>7</sup> See Testimony of the Attorney General before the House Appropriates Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998).

<sup>8</sup> Letter from David Yarbrough, FBI, to Magalie Salas, FCC Secretary, CC Docket No. 97-213, at 2 (April 14, 1998) (emphasis added) (“FBI April 14 Letter”).

revise its implementing technical standard.<sup>9</sup> Once a modified standard is adopted, equipment manufacturers, the entities most responsible for implementing the order, have stated they actually will need “24-30 months of development before [they] can even release a software package containing new features.”<sup>10</sup> Finally, in addition to the time the equipment vendors require to develop the CALEA-compliant software and hardware solutions, carriers require *additional* time to acquire, install, and test these modifications. In short, the 24 month extension requested herein is conservative and represents the shortest extension period which *could* be sufficient to permit carriers to come into compliance with CALEA.<sup>11</sup> Therefore, AirTouch submits that a 24 month extension of the CALEA compliance deadline is warranted for all cellular, broadband PCS, and local exchange carriers.

**B. Other CMRS Carriers Not Covered by the Existing Industry Standard.**

Other CMRS providers, including paging, narrowband PCS, and SMR providers, face somewhat different and difficult situations, as well. Although CALEA is approaching its fourth anniversary, the FBI has not published its capacity requirements for these services.<sup>12</sup>

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<sup>9</sup> AirTouch agrees with TIA that this additional standards work could take up to one year and that, for efficiency reasons, the work should be undertaken by TR-45.2, the industry body which established J-STD-025. See TIA, Petition for Rulemaking, CC Docket No. 97-213, at 11-12 and n.11 (April 2, 1997).

<sup>10</sup> TIA Comments at 9.

<sup>11</sup> AirTouch reserves the right to seek additional extensions if warranted, in the event that compliance with any new deadline established by the Commission becomes impossible. 47 U.S.C. § 1006(c)(1).

<sup>12</sup> The FBI’s recent capacity notice applies only to those carriers “offering local exchange services and *certain* commercial mobile radio services, specifically cellular service and [broadband] personal communications service.” FBI, *Implementation of Section 104 of CALEA: Final Notice of Capacity*, 63 Fed. Reg. 12218, 12220 (March 12, 1998)

Moreover, the FBI has yet to identify what it thinks these carriers should provide as part of CALEA's assistance capability requirements.<sup>13</sup>

The situation faced by the paging industry stands as an example of the problems created by the FBI's inaction. The paging industry has long accommodated law enforcement's interception needs by furnishing "clone" pagers.<sup>14</sup> In this regard, the FBI Director testified before Congress that CALEA was intended "to preserve the status quo" and "to provide law enforcement no more and no less access to information than it had in the past."<sup>15</sup> Indeed, until recently, the FBI had given the paging industry the impression that its current practices already satisfy CALEA's requirements.<sup>16</sup> Thus, the paging industry reasonably believed that it was already in compliance with CALEA.

To the surprise of the paging industry, however, the FBI appears to have reversed its position. The FBI declared in February that "'clone' pager-based interceptions have only limited effectiveness and utility, and fail to full meet CALEA's section 103 requirements."<sup>17</sup> Despite adopting this new position, the FBI did not advise the industry either of the nature of the

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<sup>12</sup> (...continued)  
(emphasis added).

<sup>13</sup> See note 5 *supra*, where the FBI acknowledges that the J-STD-025 standard does not cover wireless carriers other than cellular and broadband PCS licensees.

<sup>14</sup> With a "clone" pager, the agency in question receives simultaneously the same messages received by the paging customer (the customer of the interception order) — at whatever location the agency chooses, because the "clone" pager is portable.

<sup>15</sup> H.R. Rep. No. 103-827, at 22 (1994) ("House Report").

<sup>16</sup> As Motorola advised the Commission, "the FBI has stated in several recent meetings that cloning of pagers satisfies CALEA obligations for traditional paging." Motorola Reply Comments, CC Docket No. 97-213, at 7 and n.21 (Feb. 11, 1998).

<sup>17</sup> FBI Reply Comments, CC Docket No. 97-213, at 22 ¶ 35 (Feb. 11, 1998).

perceived inadequacies of existing practices or the FBI's position as to what capabilities would be necessary to bring the industry into full compliance with CALEA's requirements.<sup>18</sup> Remarkably, against this factual backdrop, the FBI has recently argued that a "blanket" extension for these service providers would be "inappropriate at this time."<sup>19</sup>

Without established capacity and capability requirements, paging carriers and other service providers not subject to the industry standard cannot be expected to comply with CALEA within the currently established deadline. As noted, Congress has directed that an extension of the CALEA compliance date is appropriate "if the Commission determines that compliance . . . is not reasonably achievable through application of technology available within the compliance period."<sup>20</sup>

For the reasons discussed herein, AirTouch submits that a two year extension of the CALEA compliance deadline is warranted for carriers not covered by the industry standard as well as for other covered carriers. AirTouch therefore urges the Commission to grant a two year

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<sup>18</sup> AirTouch notes that CALEA "allows industry to develop standards to implement the [capability] requirements." House Report at 10. Thus, while industry may "consult" with law enforcement in developing its solution, *id.* at 19, law enforcement may not, ultimately, dictate its requirements on industry. *See, e.g.*, 47 U.S.C. § 1002(b); House Report at 19 ("[T]he telecommunications industry itself shall decide how to implement law enforcement's requirements."). If law enforcement believes the industry solution is inadequate, CALEA specifies that law enforcement shall file a deficiency petition with the FCC. *See* 47 U.S.C. § 1006(b); House Report at 27.

<sup>19</sup> *See* FBI April 14 Letter at 2 (stating "[w]ith respect to other telecommunications technologies, including satellite, paging and SMRS communications, the [FBI] suggested [at a meeting with FCC personnel] that a blanket extension for compliance with CALEA was inappropriate at this time."). As noted above, with regard to services covered by the industry standard, however, the FBI recommends "that the compliance date should be extended." *Id.*

<sup>20</sup> 47 U.S.C. § 1006(c)(2). Consequently, on May 4, 1998, AirTouch Paging, Inc. filed an individual petition for extension of the CALEA compliance deadline.

extension to all carriers which are or may be subject to CALEA. As noted above, if subsequent developments indicate that this time is insufficient, affected carriers can petition the Commission for an additional extension.

## **II. EFFICIENCY DICTATES THAT THE COMMISSION SHOULD EXPEDITIOUSLY GRANT A BLANKET, INDUSTRY-WIDE EXTENSION OF THE CALEA COMPLIANCE DEADLINE**

As noted above, the *Public Notice* solicits comments regarding how the Commission might “streamline the process for granting extensions” and “reduce the administrative burden on both the affected parties and the Commission.”<sup>21</sup> The answer to this question is simple — the Commission should expeditiously grant a “blanket” extension applicable to all carriers subject to CALEA.

Although the reasons for their predicament differ, all affected carriers face the same problem — they are subject to a statutory deadline that they cannot meet through no fault of their own. As discussed above, for some carriers, a standard has been established, but the standard has been challenged as being deficient (because certain parties believe it is either over-inclusive or under-inclusive). As a result, equipment manufacturers do not have adequate time to make necessary modifications and thus carriers will be unable to deploy CALEA-compliant technology within the existing statutory timeframe. Other carriers are even farther behind, insofar as the FBI has not taken the first critical step of articulating its capacity and capability needs. Thus, in the words of the statute, compliance with CALEA’s assistance capability requirements is not “reasonably achievable” by October 25, 1998.<sup>22</sup>

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<sup>21</sup> *Public Notice* at 4.

<sup>22</sup> *See* 47 U.S.C. § 1006(c)(2).

For this reason, it is reasonable to expect that the Commission will be facing numerous individual requests for extension. Indeed, individual petitions are already being filed.<sup>23</sup> The Commission, in facing this type of situation in the past, has consistently found that the public interest is served by granting blanket relief. The Commission properly recognizes that such relief “prevent[s] the repeated expenditure of carrier and staff resources to revisit . . . issues already examined.”<sup>24</sup> Moreover, while it previously opposed such a blanket extension,<sup>25</sup> the FBI now appears to agree that entry of a blanket extension is appropriate — at least for carriers

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<sup>23</sup> As noted above, AirTouch filed a petition for extension of the CALEA compliance deadline on May 5, 1998. Similar petitions have been filed by: AT&T Wireless (jointly with Ericsson and Lucent); AirTouch Paging; Ameritech Operating Companies and Ameritech Mobile Communications, Inc. (“Ameritech”); and PrimeCo Personal Communications, L.P. See AT&T Wireless/Ericsson/Lucent Joint Petition for Extension; Air-Touch Paging Petition for Extension; Ameritech Petition for Extension (April 24, 1998); PrimeCo Petition for Extension (April 21, 1998). The Commission should expect that such petitions will continue to proliferate if it does not promptly enter a blanket extension order.

<sup>24</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket Not. 96-128, *Memorandum Opinion and Order*, DA 98-481, at ¶ 47 (March 9, 1998). See also *Ameritech Operating Companies*, 6 FCC Rcd 1541, 1542 ¶ 18 (1991) (“We believe that such a blanket . . . waiver serves the public interest by preventing the Bureau from having to expend considerable resources continually revisiting issues already examined in prior and nearly identical . . . waiver petitions.”); *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act*, 8 FCC Rcd 6828, 6841 ¶ 90 (1993) (“[W]e are persuaded that the expense and delay of obtaining waivers in individual cases may be prohibitive . . . [W]e determine that such a blanket waiver will eliminate a significant number of waiver requests thereby reducing the administrative burden on the industry and the Commission.”).

<sup>25</sup> The FBI previously asserted, without authority, that “CALEA does not . . . permit petitions for industry-wide blanket extensions.” FBI Reply Comments, CC Docket No. 97-213, at 5-6 ¶ 7 (Feb. 11, 1998). Notably, the FBI took this position even though it also asserted that “duplication of effort and expense is inconsistent with the spirit and purposes of CALEA.” FBI Joint Petition for Expedited Rulemaking at 48 ¶ 84. As noted above, however, the FBI apparently has now changed its stance regarding the legitimacy of an industry-wide extension. See text at 3 *supra*.



covered by the industry standard.<sup>26</sup> Therefore, AirTouch submits that a blanket extension for *all* affected carriers is the most efficient and appropriate procedure for the Commission to adopt.

The benefits of a blanket extension order will be realized, however, only if the Commission enters such an order expeditiously. If an order is not entered quickly, many more carriers facing the rapidly approaching statutory deadline will begin preparing and filing individual extension petitions as a means of protecting themselves. The waste of carriers' — and Commission's — resources in this fashion would undermine one of the major benefits of blanket relief. Therefore, AirTouch encourages the Commission to act quickly.

## **CONCLUSION**

For the foregoing reasons, AirTouch respectfully requests that the Commission expeditiously enter an order, applicable to all telecommunications carriers and service providers,


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<sup>26</sup> See FBI April 14 Letter at 2.

extending by two years the date in which they must comply with CALEA's assistance capability requirements.

Respectfully submitted,

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May 8, 1998

## **CERTIFICATE OF SERVICE**

I, Jo-Ann G. Monroe, hereby certify that I have on this 8th day of May, 1998

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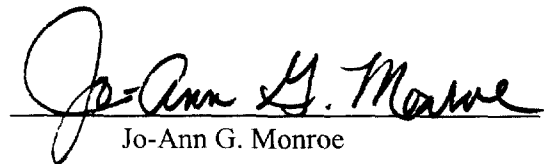
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